

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 706 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLESH MAVJI KHAVAS

Versus

COMMISSIONER OF POLICE RAJKOT.

Appearance:

MR ANIL S DAVE for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 12/03/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner under detention under the order of detention dated 30th August, 1997, passed by the Police Commissioner in the city of Rajkot, invoking his powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act'), challenges the legality and validity of the order.

2. Few facts may be stated.

The Police at Rajkot was having the information that the petitioner was a head strong person. He was often disturbing the public order by committing the offences of theft, trespass, extortion of money, moving in public places with weapons and putting public to imminent fear of death or injury etc. Because of the fear of violence at any time and at any place, the people worrying about their safety. No one was coming forward to lodge the complaint or take any action against the petitioner. He was by the people considered to be the desperado or a tartar. The Commissioner of Police at Rajkot then made necessary inquiry, perusing different records of the Police Station under him. He could see that about five complaints were lodged against the petitioner/detenu at 'B' Division, Bhaktinagar Police Station and Malvinagar Police Station. All those complaints were relating to the offences punishable under Section 457, 379, 380 of the Indian Penal Code. As alleged in those complaints, the petitioner by committing the trespass had committed the theft of silver and golden ornaments, electric motors, oil, radio and other miscellaneous things. The Police Commissioner then made an attempt to record the statements of person concerned, but, no one because of the fear of violence from the petitioner was ready to make the statement, but when assurance was given that their particulars disclosing their identity would be kept secret, some of the persons showed willingness to make the statements. After those statements, the Police Commissioner was fully satisfied that the petitioner was the dangerous person and by his one or another criminal activities he was terrorising the people and extorting money, and whoever resisted him, he used his weapon and put him to imminent danger of death or injury. The people used to chey and the shopkeepers had to pull down their shutters. The Police Commissioner then could see that such anti-social activities of the petitioner were going berserk and it was absolutely necessary to curb the petitioner's activities and make the people to feel free, but it was not possible if action under general law was taken because the said law was sounding dull and no meaningful result was possible. The only way out was to pass the order in question, consequently the Police Commissioner passed the order of detention, arrested the petitioner, and at present the petitioner is under detention.

3. On several grounds, the order of detention is assailed. But, at the time of submission before me, after I made query both the learned advocates representing the parties tapered of their submissions confining to the only ground namely non-consideration of

the representation in time. I will, therefore, confine to that point alone, and would not dwell upon other grounds raised in the petition.

4. Under Article 22 (5) of the Constitution of India, whenever such detention order is passed, the detenu has to be informed providing necessary documents and particulars so that he can make effective representation against the order passed. If he makes the representation after the receipt thereof, the concerned authority has to deal with the same promptly and dispose the same of at his earliest as liberty of the citizen is put at the highest pedestal in the Constitution. Whenever without any trial a man is detained, the authority passing the order or receiving the representation must be prompt in disposing of the representation, but if there is unjust or avoidable delay the order of detention if passed has to be declared unconstitutional. At this stage, it is necessary to refer the decision of the Supreme Court rendered in the case of Raghavendra Singh Vs. Superintendent, District Jail, Khanpur and others - AIR 1986 S.C. 356, wherein, it is laid down that the representation must be dealt with promptly and disposed of without any unjust delay or delay which could have been avoided. Till the same is disposed of, without wasting the time, the same has to be attended to and final decision has to be passed. If the representation is received by one authority who is not supposed to deal with the same, his duty is to promptly send it to the concerned department or authority so that the said authority may after the receipt thereof deal with the same promptly and dispose the same of at his earliest without wasting his time. In the case before the Supreme Court, the representation was sent to the President's Secretariat, and the Prime Minister's Secretariat received the same on 19th March 1985; and thereafter it was sent to the Ministry of Home Affairs on 25th May 1985. The same was then dealt with on May 31, 1985. There was, therefore no delay so far as the Ministry of Home Affairs was concerned. But there was a delay in sending the representation from Prime Minister's Secretariat to the Ministry of Home Affairs. In that regard, it was argued before the Supreme Court that the representation should have been addressed to the Ministry of Home Affairs and not to the President or Prime Minister because the President or the Prime Minister receives thousands of memorials or representations from every part of the country and therefore it was not expected to be dealt with as expeditiously as possible as they would be considered had the same been addressed to the appropriate ministry. Dealing with the contention,

it is observed that, even if the representation is sent to the Prime Minister or the President, the same has to be sent to the concerned department for taking appropriate action. There may be some delay in sending the representation from one Secretariat to the concerned department or Ministry, and in that case some allowance may be made for the time taken in forwarding the representation to the appropriate Ministry, and even taking all such time allowance if the representation is not dealt with promptly and no appropriate order at the earliest is passed, the detenu will be entitled to be set at liberty. It is also observed that even if the representation is addressed to the President or the Prime Minister, no fault can be found with the representation because the "Central Government" means the 'President' or the 'Prime Minister', and if the representation is addressed to the President or the Prime Minister, the same should be considered to be the representation properly addressed to the Central Government.

5. In the case of Lallubhai Jogibhai Patel V/s. Union of India - AIR 1981 Supreme Court 728, likewise view is taken while dealing with the case of detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, holding that if the materials influencing the mind of the detaining authority in passing the order of detention are not supplied to the detenu, and the representation made by the detenu and to be forwarded to the Central Government at his instance was not disposed for a long time, the continuation of his detention must be held to be illegal. In the case of Dr. Narayan Tukaram Baddi Vs. The District Magistrate and Others - 1995 (2) G.L.H. 1062, making the law clear it is held that the detenu is not only to be informed about the grounds of detention, so as to provide earliest opportunity to make representation, but there is also the corresponding obligation to dispose of the representation as expeditiously as possible because liberty of the individual is placed at the highest pedestal in the Constitution. Though no time limit is prescribed within which the representation should be considered, the utmost promptitude, expedition and diligence is expected from the authority. Any remissness, indifference or avoidable delay on the part of the authority obliged to consider representation would vitiate the continued detention of the detenu. What is therefore clear is that reasonable delay or uncontrollable delay will not be fatal, but unjust or avoidable delay or deliberate delay will certainly be fatal because nothing can be taken lightly or casually as the person is detained without a trial. If there is a delay it has to be explained, if not

explained delay will be fatal.

6. It is case of the petitioner that he made the representation and sent it by Registered Post. The letter was addressed to the Hon'ble Minister for Home(State of Gujarat), Sachivalaya, Gandhinagar. Unfortunately that registered letter was not accepted, and as it was refused, he received the same back with the postal endorsement "refused". The same is produced on record. This evidence in clear terms show that the representation was made, but by refusing to accept the same, the obligation to attend the same and dispose of the same promptly was set at naught. After detaining the petitioner no care is taken to know what he has to say as if lynch law was prevailing. The valuable right of the detenu was thus jeopardised. When that is the case, the continued detention of the petitioner must be, in view of the above stated decision held to be illegal.

7. For the aforesaid reasons, the petition is allowed. The order of detention dated 30th August, 1997, being unconstitutional and illegal is hereby quashed and set aside and the petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly made absolute.

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